

SANDOVAL COUNTY ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING REGULATION FOR SITING WIRELESS TELECOMMUNICATIONS FACILITIES FOR SANDOVAL COUNTY AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THERE OF.

BE IT ENACTED BY THE COUNTY COMMISSION OF SANDOVAL COUNTY:

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FOR PURPOSES OF THIS ORDINANCE, AND WHERE NOT INCONSISTENT WITH THE CONTEXT OF A PARTICULAR SECTION, THE DEFINED TERMS, PHRASES, WORDS, ABBREVIATIONS, AND THEIR DERIVATIONS SHALL HAVE THE MEANING GIVEN IN THIS SECTION. WHEN NOT INCONSISTENT WITH THE CONTEXT, WORDS IN THE PRESENT TENSE INCLUDE THE FUTURE TENSE, WORDS USED IN THE PLURAL NUMBER INCLUDE WORDS IN THE SINGULAR NUMBER AND WORDS IN THE SINGULAR NUMBER INCLUDE THE PLURAL NUMBER. THE WORD “SHALL” IS ALWAYS MANDATORY, AND NOT MERELY DIRECTORY.4

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Enactment and Effective Date

The effective date of this Ordinance shall be thirty (30) days after this Ordinance has been recorded in the County Clerk's Book kept by the County Clerk for that purpose.

Section 1. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the County of Sandoval's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The County of Sandoval finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the County and its inhabitants. The County also recognizes that facilitating the development of wireless service technology can be an economic development asset to the County and of significant benefit to the County and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the County's land use policies, the County is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. The intent of this Local Ordinance is to minimize the negative impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the County of Sandoval.

Section 2. Title.

This Ordinance shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the County of Sandoval.

Section 3. Jurisdiction

- A) This ordinance is intended to and shall apply to all the territory within the County to the full extent of the jurisdiction permitted by NMSA 1978 3-21-2, excepting only such areas as are now within:
 - 1) The zoning jurisdiction of an incorporated municipality or Tribal land, whether such municipal jurisdiction is being exercised or not; or,
 - 1) The concurrent-zoning jurisdiction of the County and an incorporated municipality provided such concurrent jurisdiction is being exercised under an existing extraterritorial authority or agreement.
- B) Increase in Territory Subject to Jurisdiction This Ordinance shall apply automatically to all territory that may hereafter come within the County zoning jurisdiction.

- C) Any Wireless Telecommunications Facilities located on Federal or State Lands within the unincorporated areas of Sandoval County shall be in full compliance with all requirements of said agencies and documentation showing approvals shall be submitted with the application to Sandoval County.
- D) Decrease in Territory Subject to Jurisdiction this Ordinance shall cease to apply as to any territory that may hereafter come within:
 - 1) the zoning jurisdiction of an incorporated municipality,
 - 2) the exercised jurisdiction of a concurrent extraterritorial zoning authority or agreement, or
 - 3) an increase in federal or tribal lands.

Section 4. Severability.

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B) Any Conditional Use Permit issued under this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the County.

Section 5. Definitions.

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

- 1. **"Accessory Facility or Structure"** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

2. **“Applicant”** means any Wireless service provider submitting an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.
3. **“Application”** means all necessary and appropriate documentation that an Applicant submits in order to receive a Conditional Use Permit for Wireless Telecommunications Facilities.
4. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal Telecommunications services (PCS), microwave Telecommunications and services not licensed by the FCC, but not expressly exempt from the County’s siting, building and permitting authority.
5. **“Citizens Band Radio”** FCC licensed transmitter on the Citizens Radio Band. Legal maximum power output is 5 watts. This antenna is limited by the Federal Communications Commission to sixty-five (65) feet. There will be no other exceptions for this usage. Construction of tower exceeding 120 square feet will require a State building permit.
6. **“Commission”** means the Board of County Commissioners of the County of Sandoval, New Mexico .
7. **“Co-location”** means the use of a Tower or structure to support Antennae for the provision of wireless services without increasing the height of the Tower or structure.
8. **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercial impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
9. **“Completed Application”** means an Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.
10. **“County”** means the County of Sandoval, New Mexico.
11. **“COW”** Cellular on Wheels, temporary Cell site
12. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
13. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.

14. **“Height”** means, when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
15. **“Modification” or “Modify”** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.
16. **“NIER”** means Non-Ionizing Electromagnetic Radiation
17. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
18. **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’.
19. **“Personal Wireless Services” or “PWS” or “Personal Telecommunications Service” or “PCS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
20. **“Public Safety Radio”** A publicly (F.C.C.) licensed transmitter on the Public Safety Band. Standard power output is 150 watts (e.r.p.). Maximum power output not to exceed F.C.C. licensed approval.
21. **“Telecommunication Site”** See definition for Wireless Telecommunications Facilities.
22. **“Conditional Use Permit”** means the official document or permit by which an Applicant is allowed to construct and use Wireless Telecommunications Facilities as granted or issued by the County.
23. **“Square Footage”** The measurement of Height times Width of a single face of a tower.

24. **“Stealth” or “Stealth Technology”** means minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances,.
25. **“State”** means the State of New Mexico.
26. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
27. **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’.
28. **“Temporary”** means, temporary in relation to all aspects and components of this Ordinance, something intended to, or that does, exist for fewer than ninety (90) days.
29. **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Tower”** and **“Tower”** and **“Telecommunications Site”** and **“Personal Wireless Facility”** means a structure, facility or location designed, or intended to be used as, or used to support, Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds and structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an Antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal Telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the County’s siting, building and permitting authority, excluding those used exclusively for the County’s fire, police or exclusively for private, non-commercial radio and television reception and private citizen’s bands, amateur radio and other similar non-commercial Telecommunications where the height of the facility is below the height limits set forth in this ordinance.
30. **“Zoning Officer”** The Planning and Zoning Director and/or his/her designee.

Section 6. Overall Policy and Desired Goals for Conditional Use Permits for Wireless Telecommunications Facilities.

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the County's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the County hereby adopts an overall policy with respect to a Conditional Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- 1) Implementing an Application process for person(s) seeking a Conditional Use Permit for Wireless Telecommunications Facilities;
- 2) Establishing a policy for examining an application for and issuing a Conditional Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
- 3) Ordinance Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers;
- 4) Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

Section 7. Conditional Use Permit Application and Other Requirements.

- A) All Applicants for a Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this section. The County Commission is the officially designated agency or body of the County to whom applications for a Conditional Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking Conditional Use permits for Wireless Telecommunications Facilities. The County may at its discretion delegate or designate other official agencies of the County or others to accept, review, analyze, evaluate and make recommendations to the County Commission with respect to the granting or not granting, recertifying or not

recertifying or revoking Conditional Use permits for Wireless Telecommunications Facilities.

- B) An Application for a Conditional Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the Applicant, shall also sign the Application and shall agree to remove any existing violations and make all existing telecommunications facilities compliant with this ordinance and all applicable local, state and telecommunications codes prior to the issuance of any Certificate of Occupancy or Compliance or the functional equivalent for a new or modified wireless facility at the discretion of the County, any false or misleading statement in the Application may subject the Applicant to denial of the Application without further consideration or opportunity for correction.
- C) Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the County.
- D) The Applicant shall include a statement in writing:
 - 1) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, unless specifically granted relief by the County in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal Laws, rules, and regulations;
 - 2) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
- E) No Wireless Telecommunications Facilities shall be installed or constructed until the Application is reviewed and approved by the County, and the Conditional Use Permit has been issued.
- F) All applications for the construction or installation of new Wireless Telecommunications Facilities shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the Applicant. Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State. The Application shall include the following information:
 - 1) Documentation that demonstrates the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the County. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;

- 2) The Name, address and phone number of the person preparing the report;
 - 3) The Name, address, and phone number of the property owner, operator, and Applicant, and to include the legal form of the Applicant;
 - 4) The Postal address and tax map parcel number of the property;
 - 5) The Zoning District or designation in which the property is situated;
 - 6) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
 - 7) The Location of nearest residential structure;
 - 8) The Location, size and height of all structures on the property which is the subject of the Application;
 - 9) The Location, size and height of all proposed and existing antennae and all appurtenant structures;
 - 10) The Type, locations and dimensions of all proposed and existing landscaping, and fencing;
 - 11) The number, type and design of the Tower(s) and Antenna(s) proposed and the basis for the calculations of the Tower's capacity to accommodate multiple users;
 - 12) The make, model and manufacturer of the Tower and Antenna(s);
 - 13) A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - 14) The frequency, modulation and class of service of radio or other transmitting equipment;
 - 15) The actual intended transmission and the maximum effective radiated power of the Antenna(s);
 - 16) Direction of maximum lobes and associated radiation of the Antenna(s);
 - 17) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC;
 - 18) Certification that the proposed Antenna(s) will not cause interference with other telecommunications devices;
 - 19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
 - 20) Certification that a topographic and geomorphologic study and analysis has been conducted and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Wireless Telecommunications Facilities on the proposed site.
- G) In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the County. Copies of written requests and responses for shared use shall be provided to the County in the Application, along with any letters of rejection stating the reason for rejection.
- H) The Applicant shall certify that the Telecommunication Facility, foundation and attachments are designed and will be constructed to meet all local, County,

State and Federal structural requirements for loads, including wind and ice loads.

- I) The Applicant shall certify that the Wireless Telecommunications Facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- J) An Applicant may be required to submit an Environmental Assessment Analysis and a Visual addendum. Based on the results of the Analysis, including the Visual addendum, the County may require submission of a more detailed visual analysis. The scope of the required Environmental and visual assessment will be reviewed at the pre-application meeting.
- K) The Applicant shall furnish a Visual Impact Assessment, which shall include:
 - 1) A "Zone of Visibility Map" which shall be provided in order to determine locations from which the Tower may be seen.
 - 2) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the County as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at a pre-application meeting.
 - 3) An assessment of the visual impact of the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- L) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed Wireless Telecommunications Facilities.
- M) Any and all representations made by the Applicant to the County on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the County.
- N) All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- O) All Wireless Telecommunications Facilities shall contain a demonstration that the Facility be sited so as to be the least visually intrusive reasonably possible and thereby have the least adverse visual effect on the environment and its

character, on existing vegetation, and on the residences in the area of the Wireless Telecommunications Facility.

- P) Both the Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may required by the County.
- Q) At a Telecommunications Site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- R) A Person who holds a Conditional Use Permit for Wireless Telecommunications Facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted Wireless Telecommunications Facilities in strict compliance with all current applicable technical, safety and safety-related codes adopted by the County, County, State, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- S) A holder of a Conditional Use Permit granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable Law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the County or other governmental entity or agency having jurisdiction over the applicant.
- T) An Applicant shall submit to the County the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities and to the County Planning Department.
- U) The Applicant shall examine the feasibility of designing a proposed Tower to accommodate future demand for at least five (5) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least five (5) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially

Impracticable or creates an unnecessary and unreasonable burden, based upon:

- 1) The foreseeable number of FCC licenses available for the area;
 - 2) The kind of Wireless Telecommunications Facilities site and structure proposed;
 - 3) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
 - 4) Available space on existing and approved Towers.
- V) The owner of the proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
- 1) Respond within 60 days to a request for information from a potential shared-use Applicant;
 - 2) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;
 - 3) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.
- Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit for the Tower.
- W) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues, which will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site. Costs of the County's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- X) The holder of a Conditional Use Permit shall notify the County of any intended modification of a Wireless Telecommunication Facility and shall apply to the County to modify, relocate or rebuild a Wireless Telecommunications Facility.
- Y) In order to better inform the public, in the case of a new Telecommunication Tower, the applicant shall, prior to the public hearing on the application, hold a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second

date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the County. The Applicant shall inform the County, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 PM on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday.

- Z) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the Tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines, that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

AA) All applicants for Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such facilities should develop their plans to allow reasonable requests from the County to use space on its towers and space within the existing or planned compound for deploying and operating public service radio facilities (e.g. police, fire, emergency, homeland security, etc.) On an existing tower, should the addition of County requirements exceed structural limits the request may be denied. The County will pay no fees for space on towers or for space within the compound. The County will also require access to its equipment on a 24X7 basis for maintenance and operating requirements. However, the County will work with the respective applicants to insure they receive adequate advance notice for routine activities (excluding emergencies.)

Section 8. Establishment of Telecommunications Districts

- A) Communication Districts: In order to carry out the provisions of this Ordinance, the following Communication districts are established:

- 1) **SSCD** - Southern Sandoval County Communication District: The Southern District is comprised of a dense or high population or growth area. Multiple smaller towers are needed to meet the need for service by providers.
- 2) **JCCD** - Jemez Corridor Communication District: The Jemez District is comprised of medium population or growth areas with mountainous regions requiring multiple types of equipment and towers to achieve coverage.
- 3) **RCCD** - Rural County Communication District: The Rural District is comprised of sparse or light population or growth areas. Taller towers can be used with increased distances between towers.

- B) These districts are created as a result of the varied demographic and geographic features of Sandoval County.
- C) District Map: A map of the Communication districts shall be included in this Ordinance (See figure 8.1)
- D) District Standards: The standards will apply as defined throughout the ordinance:

Section 9. Location of Wireless Telecommunications Facilities.

- A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities in each of the Telecommunications Districts, one (1) being the highest priority and six (6) being the lowest priority.
 - 1) On existing Towers or other structures without increasing the height of the tower or structure;
 - 2) On County-owned properties;
 - 3) On properties in areas zoned for Heavy Industrial use
 - 4) On properties in areas zoned for Commercial use
 - 5) On properties in areas zoned for Agricultural use
 - 6) On properties in areas zoned for Residential use
- B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the County why co-location is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- D) Notwithstanding the above, the County may approve any site located within an area in the above list of priorities, provided that the County finds that the proposed site is in the best interest of the health, safety and welfare of the County and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written

explanation as to why sites of a higher priority were not selected shall be included with the Application.

- F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the County may disapprove an Application for any of the following reasons.

- 1) Conflict with safety and safety-related codes and requirements;
- 2) Conflict with the historic nature or character of a neighborhood or historical district;
- 3) The use or construction of Wireless Telecommunications Facilities, which is contrary to an already stated purpose of a specific zoning or land use designation;
- 4) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the County, or employees of the service provider or other service providers;
- 5) Conflicts with the provisions of this Ordinance.

Section 10. Shared use of Wireless Telecommunications Facilities and other structures.

- A) Locating on existing Towers or others structures without increasing the height, shall be preferred by the County, as opposed to the construction of a new Tower. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within four (4) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an exiting Tower or other suitable structure can not be used.
- B) An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.
- C) Such shared use shall consist only of the minimum Antenna array technologically required to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown.

Section 11. Height of Telecommunications Tower(s).

- A) In all districts the support structure and roof mounted antennas or antennas mounted to existing structures shall not exceed the height of roofline of existing structure. Ground Mounted structures and antenna shall not exceed seventy-five (75) feet in height above the existing grade in the Southern District. Ground Mounted structures and antennas in the Jemez and Rural Districts shall not exceed one hundred ninety five (195) feet from existing grade. No tower shall be higher than 195 feet.

- B) The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the County, to the extent practicable, unless good cause is shown.
- C) Building mounted antennae should be located and designed to be an integral part of the building and shall be secured or camouflaged, as necessary or as reasonably required by the Board, to minimize the visual impact on surrounding properties and minimize any change in or impact on the nature and character of the community.
- D) No Tower constructed after the effective date of this Ordinance, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with municipal, County, State, and/or any Federal statute, law, local law, County ordinance, code, rule or regulation.

Section 12. Appearance and Visibility of Wireless Telecommunications Facilities.

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law.
- B) Towers shall be galvanized and painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.
- C) If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

Section 13. Security of Wireless Telecommunications Facilities.

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- 1) All Antennas, Towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- 2) Transmitters and Telecommunications control points shall be installed such a manner that they are readily accessible only to persons authorized to operate or service them.

Section 14. Signage.

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

Section 15. Lot Size and Setbacks.

- A) All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.
- B) Any decision of the Planning and Zoning Office may be appealed to the Planning and Zoning Commission as provided in Section 33 of this Ordinance.

Section 16. Retention of Expert Assistance and Reimbursement by Applicant.

- A) The County may hire any consultant and/or expert necessary to assist the County in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B) An Applicant shall deposit with the County funds sufficient to reimburse the County for all reasonable costs of consultant and expert evaluation and consultation to the County in connection with the review of any Application including the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500 with the County shall precede the pre-application meeting. The County will maintain a separate escrow account for all such funds. The County's consultants/experts shall invoice the County for its services in reviewing the Application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall

immediately, upon notification by the County, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the County before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the County is more than the amount of the actual invoicing [at the conclusion of the project] for work performed through the date of issuance of a Certificate of Occupancy or Compliance for the project, the remaining balance shall be promptly refunded to the Applicant.

- C) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

Section 17. Exceptions from a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) No Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of the effective date of this Ordinance without having first obtained a Conditional Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Conditional Use Permit shall be required for those non-commercial exceptions noted in the definition of Wireless Telecommunications Facilities.
- B) All Wireless Telecommunications Facilities existing on or before the effective date of this Ordinance shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility must comply with this Ordinance.
- C) All Amateur Radio Facilities that meet the requirements of the FCC are exempt from the zoning requirements of this Ordinance, but will require a building permit for any tower with a single face exceeding 120 square feet.

Section 18. Public Hearing and Notification Requirements.

- A) Prior to the approval of any Application for a Conditional Use Permit for Wireless Telecommunications Facilities, a public hearing shall be held by the County, notice of which shall be published in the official newspaper of the County no less than ten (10) calendar days prior to the scheduled date of the public hearing. In order that the County may notify nearby landowners, the Applicant, the Application shall contain the names and address of all landowners whose property is located within fifteen hundred (1500) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.

- B) There shall be no public hearing required for an application to co-locate on an existing tower or other structure, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.
- C) The County shall schedule the public hearing referred to in Subsection (A) of this section once it finds the Application is complete, the County, at any stage prior to issuing a Conditional Use Permit, may require such additional information as it deems necessary.

Section 19. Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) The County and/or its consultant will undertake a review of an Application pursuant to this Ordinance in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B) The County may refer any Application or part thereof to any advisory or other committee for a non-binding recommendation.
- C) After the public hearing and after formally considering the Application, the County may approve, approve with conditions, or deny a Conditional Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the Applicant.
- D) If the County approves the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the County's action, and the Conditional Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Conditional Use Permit has been granted hereunder, no additional permits or approvals from the County, such as site plan or zoning approvals, shall be required by the County for the Wireless Telecommunications Facilities covered by the Conditional Use Permit.
- E) If the County denies the Conditional Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the County's action.

Section 20. Existing Tower Requirements.

Companies with existing towers within Sandoval County will be given three (3) months from the date of notification to provide: the locations, present array load and the available collocate space on each tower. This information will be required to update all addressing, non-conforming conditions, and assessment information.

Section 21. Recertification of a Conditional Use Permit for Wireless Telecommunications Facilities.

- A) Between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effect date of the Conditional Use Permit and all subsequent five year anniversaries of the effective date of the original Conditional Use Permit for Wireless Telecommunications Facilities, the holder of a Conditional Use Permit for such Wireless Telecommunication Facilities shall submit a signed written request to the County for recertification. In the written request for recertification, the holder of such Conditional Use Permit shall note the following:
- 1) The name of the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities;
 - 2) If applicable, the number or title of the Conditional Use Permit;
 - 3) The date of the original granting of the Conditional Use Permit;
 - 4) Whether the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise visibly modified since the issuance of the Conditional Use Permit and if so, in what manner;
 - 5) If the Wireless Telecommunications Facilities have been moved, re-located, rebuilt, or otherwise visibly modified, then whether the County approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
 - 6) That the Wireless Telecommunications Facilities are in compliance with the Conditional Use Permit and compliance with all applicable codes, Laws, rules and regulations;
 - 7) Recertification that the Tower and attachments both are designed and constructed and continue to meet all local, County, State and Federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a Professional Engineer licensed in the State, the cost of which shall be borne by the Applicant.
- B) If, after such review, the County determines that the permitted Wireless Telecommunications Facilities are in compliance with the Conditional Use Permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the County issue a recertification of the Conditional Use Permit for the Wireless Telecommunications Facilities, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review it is determined that the permitted Wireless Telecommunications Facilities

are not in compliance with the Conditional Use Permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the County may refuse to issue a recertification Conditional Use Permit for the Wireless Telecommunications Facilities, and in such event, such Wireless Telecommunications Facilities shall not be used after the date that the Applicant receives written notice of the decision by the County until such time as the Facility is brought into compliance. Any decision requiring the cessation of use of the Facility or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the Facility.

- C) If the Applicant has submitted all of the information requested and required by this Ordinance, and if the review is not completed, as noted in subsection (B) of this section, prior to the five (5) year anniversary date of the Conditional Use Permit, or subsequent five year anniversaries, then the Applicant for the permitted Wireless Telecommunications Facilities shall receive an extension of the Conditional Use Permit for up to six (6) months, in order for the completion of the review.
- D) If the holder of a Conditional Use Permit for Wireless Telecommunications Facilities does not submit a request for recertification of such Conditional Use Permit within the timeframe noted in subsection (A) of this section, then such Conditional Use Permit and any authorizations granted there under shall cease to exist on the date of the fifth anniversary of the original granting of the Conditional Use Permit, or subsequent five year anniversaries, unless the holder of the Conditional Use Permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the County agrees that there were legitimately extenuating circumstances, then the holder of the Conditional Use Permit may submit a late recertification request or Application for a new Conditional Use Permit.

Section 22. Extent and Parameters of Conditional Use Permit for Wireless Telecommunications Facilities.

The extent and parameters of a Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

- A) such Conditional Use Permit shall be non-exclusive
- B) such Conditional Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the County.
- C) such Conditional Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit, or for a material violation of this Ordinance after prior written notice to the holder of the Conditional Use Permit.

Section 23. Application Fee.

- A) At the time that a person submits an Application for a Conditional Use Permit for a new Tower, such person shall pay a non-refundable application fee as listed below to the County.
- B) Fee schedule: Application – Any application required by this Ordinance shall be filed with the required filing fee on prescribed forms obtained from the Planning and Zoning Department. Such fees shall not be required where the County or any official thereof is the moving party. Other parties as indicated in this document are exempt from fee requirements.

- C) Fees – Filing fees will be charged as follows per site:

Conditional Use Review:	\$60.00	
Tower Application Fee:	\$5000.00	(includes building permit and Address fees)
Collocation Applications Fee:	\$3000.00	
Appeal:	\$250.00	
Temporary Use Permit:	\$50.00	

- . Late Fee Penalty – Applications for and Fees Collected after the fact, shall be double as that listed above.

- D) No Application fee is required in order to rectify a Conditional Use Permit for Wireless Telecommunications Facilities, unless there has been a visible modification of the Wireless Telecommunications Facility since the date of the issuance of the existing Conditional Use Permit for which the conditions of the Conditional Use Permit have not previously been modified. In the case of any modification, the fees provided in Subsection (A) shall apply.

Section 24. Performance Security.

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this Ordinance and conditions of any Conditional Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to

restore the site to a condition comparable to that, which existed prior to the issuance of the original Conditional Use Permit.

Section 25. Reservation of Authority to Inspect Wireless Telecommunications Facilities.

In order to verify that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, ordinances and regulations and other applicable requirements, the County may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

Section 26. Notifications and Annual NIER Certification.

- A) The holder of the Conditional Use Permit shall, annually, certify to the County that NIER levels at the site are within the threshold levels adopted by the FCC.
- B) The holder of the Conditional Use Permit shall, provide 24 hour notification of any changes or modifications (e.g. re-positioning antenna, propagation patterns) that will affect the defined service areas. This information is necessary to support advance notification of E911 Service Centers.

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Section 27. Liability Insurance.

- A) A holder of a Conditional Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Conditional Use Permit in amounts as set forth below
 - 1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - 2) Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate;
 - 3) Workers Compensation and Disability: Statutory amounts.
- B) The Commercial General Liability insurance policy shall specifically include the County and its officers, Commissions, employees, committee members, attorneys, agents and consultants as additional named insured.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.

- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the County at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F) Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) days after the grant of the Conditional Use Permit, the holder of the Conditional Use Permit shall deliver to the County a copy of each of the policies or certificates representing the insurance in the required amounts.

Section 28. Indemnification.

- A) Any application for Wireless Telecommunication Facilities that is proposed for County property, pursuant to this Ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, Commissions, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the County.
- B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the County itself applies for and secures a Conditional Use Permit for Wireless Telecommunications Facilities.

Section 29. Penalties.

- A) Anyone violating any of the provisions of this Ordinance shall upon conviction be subject to a fine not exceeding \$300.00 or imprisonment for a period not exceeding ninety (90) days, or both such fine and imprisonment. Any violation continued for a period of thirty (30) days after conviction shall be prosecuted and treated as a separate offense.

- B) Violations of the reporting clause of this Ordinance (Section 9.H) shall be cause to have the violator's permit(s) to be suspended or revoked, in addition to the above listed penalty
- C) However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance or regulation shall be deemed misdemeanors and for such purpose only all provisions of Law relating to misdemeanors shall apply to such violations. Each day(s) continued violation shall constitute a separate additional violation.
- D) Notwithstanding anything in this Ordinance, the holder of the Conditional Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Ordinance or any section of this Ordinance. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit. The County may also seek injunctive relief to prevent the continued violation of this Ordinance, without limiting other remedies available to the County.

Section 30. Default and/or Revocation.

- A) If Wireless Telecommunications Facilities are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Conditional Use Permit, then the County shall notify the holder of the Conditional Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) days of the date of the postmark of the Notice, or of the date of personal service of the Notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this Ordinance, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the County may, at its sole discretion, order the violation remedied within twenty-four (24) hours.
- B) If within the period set forth in (A) above the Wireless Telecommunications Facilities are not brought into compliance with the provisions of this Ordinance, or of the Conditional Use Permit, or substantial steps are not taken in order to bring the affected Wireless Telecommunications Facilities into compliance, then the County may revoke such Conditional Use Permit for Wireless Telecommunications Facilities, and shall notify the holder of the Conditional Use Permit within forty-eight (48) hours of such action.

Section 31. Removal of Wireless Telecommunications Facilities.

- A) Under the following circumstances, the County may determine that the health, safety, and welfare interests of the County warrant and require the removal of Wireless Telecommunications Facilities.
 - 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180)

days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;

- 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
 - 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary authorization.
- B) If the County makes such a determination as noted in subsection (A) of this section, then the County shall notify the holder of the Conditional Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed, the County may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.
- C) The holder of the Conditional Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the County. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the County.
- D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the permit holder has received notice, then the County may order officials or representatives of the County to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Conditional Use Permit holder.
- E) If, the County removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the County may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.
- F) Notwithstanding anything in this Section to the contrary, the County may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Conditional Use Permit, subject to the approval of the County, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit and the County. If such a plan is not

developed, approved and executed within the ninety (90) day time period, then the County may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

Section 32. Relief.

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance may request such at the pre-Application meeting, provided that the relief or exemption is contained in the original Application for either a Conditional Use Permit, or in the case of an existing or previously granted Conditional Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the County in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the County, its residents and other service providers.

Section 33. Periodic Regulatory Review.

- A) The County may at any time conduct a review and examination of this entire Ordinance.
- B) If after such a periodic review and examination of this Ordinance, the County determines that one or more provisions of this Ordinance should be amended, repealed, revised, clarified, or deleted, and then the County may take whatever measures are necessary in accordance with applicable Law in order to accomplish the same. It is noted that where warranted, and in the best interests of the County, the County may repeal this entire Ordinance at any time.
- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the County may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Ordinance.

Section 34. Appeals

Right of Appeal. Anyone aggrieved by a decision of the Zoning Officer or the Zoning Commission in carrying out the provision of this Ordinance may appeal such decision as specified in Table A below. Such appeal must set forth specifically wherein it is claimed there was an error or an abuse of discretion, or where the decision was not supported by evidence in the matter.

TABLE A

Type of Application	Zoning Officer	Zoning Commission	County Board
Temporary Use Permit (Administrative Procedure)	Decision	Considers Appeal (Hearing)	Considers Appeal of Zoning Commission (Record Hearing)
Conditional Use Permit	Recommends	Decision (Hearing)	Considers Appeal of Zoning Commission (Record Hearing)
Variance	Recommends	Decision (Hearing)	Considers Appeal of Zoning Commission (Record Hearing)

A) Application. Any appeal following a decision of the Planning and Zoning Officer shall be made in writing to the Board of County Zoning Commissioners on prescribed forms obtainable from the Zoning Officer upon payment of the applicable filing fee. Appeals shall be filed within fifteen (15) working days of the date of the Zoning Officer's Decision. Appeals of the Zoning Commission will be heard by the Board of County Commissioners. These appeals shall be filed within fifteen (15) working days of the date of the Zoning Commission's Decision.

- 1) Public Hearing. The decision on an appeal shall be made by the appropriate body as specified in Table A following a public hearing. Within sixty (60) days of the date of the filing of an appeal the Zoning Officer shall schedule a date for the public hearing. At that time, person(s) filing the appeal shall be notified by certified mail, return receipt requested, of the time and place of the of the public hearing. The date of the appeal hearing will be scheduled by the Zoning Officer based in part upon the quantity and complexity of other matters pending before the body that is to consider the appeal. Notification of the time and place of the public hearing shall be published in a newspaper of general circulation in the County at least fifteen (15) days prior to the hearing. At the same time, notice shall be provided via certified mail, return receipt requested, to the original applicant (if he/she is not the appellant) and the owners of the property adjacent to the property that is the subject of the appeal.
- 2) Review on Record. Any review of a decision of the Zoning Commission by the County Board shall be confined to the record of the proceedings, which shall include:

- 3) All materials, pleadings, memoranda, stipulations, and motions submitted by any party to the proceeding and received or considered by the Zoning Officer or Zoning Commission as evidence;
 - 4) All materials submitted to the Zoning Officer with respect to any application(s);
 - 5) The minutes and/or tape recording of the public hearing(s) held by the Zoning Commission;
 - 6) The findings of fact and conclusion of law entered by the Zoning Commission following their decision; and
 - 7) Argument confined to the record by the parties or their legal representatives at the time of review before the County Board.
- B) Stay of Proceedings. An appeal shall stay all proceedings in the action unless the Zoning Officer or Zoning Commission certifies that a stay will cause imminent peril to life or property. Upon such certification, the proceedings shall not be stayed except by order of the district court.
- C) Decision. At the public hearing, the appellate body (either the County Board or Zoning Commission, whichever is applicable) may reverse, change, or affirm the decision appealed. A majority vote of the members of the County Board is required to reverse or change a decision, made by the Zoning Commission. The decision of the Board of County Commissioners shall become final on the date the decision is recorded by the County Clerk.

Section 35. Adherence to State and/or Federal Rules and Regulations.

- A) To the extent that the holder of a Conditional Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

- C) Complaints and Notification. The Zoning Officer may institute any appropriate actions or proceedings whenever there is a probable cause to believe there is a violation of this Ordinance. Any person aggrieved by an apparent violation of this Ordinance shall file a written complaint with the Zoning Officer who shall immediately document in writing the nature of the complaint and investigate such complaint to determine if a violation of this Ordinance is found to exist. Whenever the Zoning Officer finds probable cause to believe a violation of this Ordinance exists, whether acting on independent initiative or in response to an investigated complaint, the Zoning Officer shall notify the person responsible for the alleged violation in writing. Such notification shall order the necessary correction to be made within thirty (30) days following the date of notification. Any person who fails to comply with the notification order shall be subject to penalties as stated in this Ordinance.

Section 36. Conflict with Other Laws.

Where this Ordinance differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or federal government, this Ordinance shall apply.

Section 37. Authority.

This Local Ordinance is enacted pursuant to applicable authority granted by the State and federal government.

ADOPTED this ____ day of _____, 2003.

ATTEST:

SANDOVAL COUNTY BOARD
OF COMMISSIONERS

Victoria Dunlap, County Clerk

Jack Thomas, Chairman

Daymon Ely, Vice Chairman

William Sapien, Member

APPROVED AS TO LEGAL FORM:

Elizabeth Johnson, Member

David Mathews, County Attorney

David Bency, Member